

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tileyah Williams	Team: Squad #03	CCRB Case #: 202205441	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 08/14/2022 11:12 PM	Location of Incident: 14th Street-Union Square subway station	18 Mo. SOL 2/14/2024	Precinct: 13
Date/Time CV Reported Thu, 08/18/2022 12:39 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 08/18/2022 12:39 PM

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Michael Zhang	19484	968202	TD 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Wade Liu	07774	958824	TD 4

Officer(s)	Allegation	Investigator Recommendation
A. PO Michael Zhang	Force: Police Officer Michael Zhang used physical force against § 87(2)(b)	
B. PO Michael Zhang	Force: Police Officer Michael Zhang used physical force against § 87(2)(b)	
C. PO Michael Zhang	Abuse: Police Officer Michael Zhang threatened to seize § 87(2)(b) property.	
D. PO Michael Zhang	Abuse: Police Officer Michael Zhang issued a retaliatory summons to § 87(2)(b)	

## Case Summary

On August 18, 2022, § 87(2)(b) filed this complaint with CCRB via the call processing system.

On August 14, 2022, at about 11:12 p.m., § 87(2)(b) entered the 14<sup>th</sup> Street Union Square subway station in Manhattan and used a reduced fare MetroCard. Police Officer Michael Zhang, of Transit District 4, attempted to stop § 87(2)(b) and he did not stop. PO Zhang allegedly grabbed § 87(2)(b) and allegedly dug his nails into § 87(2)(b) skin (**Allegation A: Force,** § 87(2)(g) and (**Allegation B: Force,** § 87(2)(g) PO Zhang threatened to confiscate § 87(2)(b) MetroCard (**Allegation C: Abuse of Authority,** § 87(2)(g) and issued him a retaliatory summons for entering the subway without payment (**Allegation D: Abuse of Authority,** § 87(2)(g).

The investigation obtained BWC (body-worn camera) videos from PO Zhang and his partner, Police Officer Wade Liu (**01, 02 Board Review**). The investigation also obtained footage from the subway (**03 Board Review**).

## Findings and Recommendations

### **Allegation (A) Force: Police Officer Michael Zhang used physical force against**

§ 87(2)(b)

### **Allegation (B) Force: Police Officer Michael Zhang used physical force against**

§ 87(2)(b)

### **Allegation (C) Abuse of Authority: Police Officer Michael Zhang threatened to seize**

§ 87(2)(b)

**property.**

### **Allegation (D) Abuse of Authority: Police Officer Michael Zhang issued a retaliatory summons to**

§ 87(2)(b)

§ 87(2)(b) testified that on August 14, 2022, at approximately 11:43pm, he entered the 14th Street-Union Square subway station (**04 Board Review**). § 87(2)(b) approached the turnstiles and saw PO Zhang and PO Liu. They were standing on the opposite side of the turnstiles, five feet away, with their backs facing § 87(2)(b). § 87(2)(b) took his wallet out of his back pocket and started looking for his MetroCard. He was using a reduced fare MetroCard that his mother gave him. PO Zhang then turned around and made eye contact with § 87(2)(b) and told him, “Just hop over.” § 87(2)(b) did not believe it was right to hop over, so he did not do that. § 87(2)(b) noted that he had headphones in and was listening to music. Once § 87(2)(b) found the MetroCard, he swiped it and walked through the turnstile. He started putting the MetroCard away, walked past PO Zhang and PO Liu, and headed for the train. PO Zhang said, “Wait.” § 87(2)(b) heard this but continued to walk because he did not believe that PO Zhang was talking to him. He heard PO Zhang say wait again. § 87(2)(b) stopped walking and turned only his head to see if PO Zhang was talking to him. By the time that § 87(2)(b) turned his head, PO Zhang was behind him and put his hand under the back of § 87(2)(b) right arm and grabbed his bicep. PO Zhang’s four fingers, excluding the thumb touched the front of § 87(2)(b) arm and PO Zhang dug his nails into § 87(2)(b) skin. § 87(2)(b) screamed in pain and PO Zhang immediately let go of his arm. § 87(2)(b) turned his full body around and told

PO Zhang that that was not necessary and that he did not know PO Zhang was talking to him. PO Zhang told § 87(2)(b) that he asked him nicely to stop and that he had the right to use force. The officers then requested § 87(2)(b) MetroCard. PO Zhang wrote § 87(2)(b) a summons and threatened to keep his MetroCard, though they returned it at the end of the incident. § 87(2)(b) then left. § 87(2)(b) said that his arm started bruising immediately after being grabbed and that he still has a bruise, which is tender to the touch.

Photos provided to the investigation by § 87(2)(b) show that on August 15, 2022, at 7:21pm, his right bicep had a circular black and red bruise with slight black and purple bruises underneath (**05 Board Review**). By August 17, 2022, his right bicep had four black, yellow, and red bruises.

PO Zhang's BWC recording shows that at 30 seconds, PO Zhang turns around and walks toward § 87(2)(b) while extending his right open palm (**02 Board Review**). The camera is not recording audio at this time. § 87(2)(b) continues walking past PO Zhang. § 87(2)(b) turns his head as he walks and looks directly at PO Zhang. PO Zhang walks behind § 87(2)(b). § 87(2)(b) walks toward the stairs leading to a train platform but at 55 seconds, he changes his direction and walks toward a turnstile. PO Zhang grabs § 87(2)(b) and pulls his right shirt sleeve toward himself. § 87(2)(b) stops, and PO Zhang lets go. § 87(2)(b) lifts his sleeve and looks at his right arm. PO Liu is not in view. When the audio starts, § 87(2)(b) tells PO Zhang that that was not okay. PO Zhang asks for § 87(2)(b) MetroCard and tells him that he told him to stop moving. PO Zhang then places an open palm on § 87(2)(b) and guides him to a wall. PO Liu is now in view and was standing behind PO Zhang. § 87(2)(b) explains that the card belonged to his grandmother. At 1:43 minutes of the recording, PO Zhang says that he is going to confiscate the MetroCard but at 3:20 minutes, he says that he does not want to take his grandmother's card and is going to give it back to him. At 2:49 minutes of the recording, PO Zhang explains to § 87(2)(b) that he could have just told him not to use the card but since he kept on walking, that he was going to give him a summons. At 7:49 minutes, PO Zhang tells § 87(2)(b) that he could grab § 87(2)(b) because it was a stop and § 87(2)(b) kept on walking.

PO Zhang testified that he did not grab § 87(2)(b) but instead used an open palm to hold his right elbow (**06 Board Review**). He held his elbow because he did not know which direction § 87(2)(b) was going in and did not want § 87(2)(b) to go to the subway platform. He noted that he received training to engage with civilians in the mezzanine where possible, so that they are not in danger with train activity. He did not believe that his contact with § 87(2)(b) was forceful. He heard § 87(2)(b) say, "ow," but did not think anything of this. After reviewing his BWC of his interaction with § 87(2)(b) during his CCRB interview, he maintained that he only held his elbow. He denied digging his nails into § 87(2)(b) arm. PO Zhang told § 87(2)(b) that he had the right to take the MetroCard because he was using it when it did not belong to him. PO Zhang explained to the investigation that he had the discretion to issue § 87(2)(b) a warning or give him a summons for using the reduced fare MetroCard. The reason that he gave § 87(2)(b) a summons is because he kept walking away from officers and acted like he did not deserve a summons.

Patrol Guide Procedure 221-01 notes that officers are permitted to use a reasonable amount of force against an individual to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody (**07 Board Review**). The Metropolitan Transportation Authority (MTA) Rules of Conduct, note that individuals are not permitted to enter the New York City Transit subway system without payment of the fare (**08 Board Review**). The MTA highlights the qualifications of people who may receive a reduced fare MetroCard: riders who are 65 or older, receive Medicare benefits for any reason other than age, serious mental illness and receiving Supplemental Security Income, blindness, deafness or hearing Loss, ambulatory disability, cognitive disability, or other physical disability. Fare media that have been improperly transferred or that have been used in a manner inconsistent with the rules shall be confiscated (**09 Board Review**). In DCT Disciplinary Case No. 80514/04, an officer was disciplined for issuing summonses as a weapon of retaliation. Officers should not allow their personal feelings to cloud their judgment as an officer of the law (**10 Board Review**).

Although the BWC footage does not record the initial conversation between § 87(2)(b) and PO Zhang, it shows that § 87(2)(b) heard when PO Zhang addressed him because he turned around and looked him but continued walking as PO Zhang spoke to him. At that point, § 87(2)(b) was not free to leave because PO Zhang was addressing him for violating MTA's rules. The investigation does not credit PO Zhang's account that he only held § 87(2)(b) elbow because the footage shows that he pulled § 87(2)(b) shirt.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) said that PO Zhang dug his nails into § 87(2)(b) skin, but PO Zhang denied doing this. The footage does not clearly show whether PO Zhang contacts § 87(2)(b) arm, which was under his shirt and whether he used his nails to do so. § 87(2)(g)

§ 87(2)(g)

PO Zhang told § 87(2)(b) that he could confiscate the MetroCard and according to the MTA rules, § 87(2)(b) did not qualify for the reduced fare MetroCard and should not have been using it. § 87(2)(g)

As noted above, when § 87(2)(b) used the reduced fare MetroCard, he violated the rules of the MTA. PO Zhang could have issued him a summons § 87(2)(g). However, PO Zhang implied during the incident and stated in his CCRB interview that he did not issue § 87(2)(b) a summons for simply

violating the MTA rules. PO Zhang said that while he would have otherwise provided a verbal warning, he issued § 87(2)(b) a summons because he walked away from him and acted like he did not deserve a ticket. PO Zhang allowed his personal feelings to cloud his judgement. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) is a party (**11 Board Review**).
- PO Zhang has been a member of service for three years and this is the first CCRB complaint to which he has been a subject.

### Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
  - On October 23, 2022, the investigation made an inquiry with the New York City Office of the Comptroller to determine whether a Notice of Claim was filed regarding this incident (**12 Board Review**). The results will be added to the case file upon receipt.
  - [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- § 87(2)(g)

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Squad: 3

Investigator: Tileyah Williams      Investigator Tileyah Williams 10/26/2022  
Signature      Print Title & Name      Date

Squad Leader: Rolando Vasquez      IM Rolando Vasquez 10/27/2022  
Signature      Print Title & Name      Date